IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4030 of 2006 (O&M)

Date of Decision: 25.09.2007

Narender Kumar Jain ...Appellant

Vs.

State of Haryana & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.O.P.Goyal, Senior Advocate,
with Ms. Priya Khurana, Advocate,
for the appellant.

Mr. Amit Kaushik, AAG, Haryana
for respondents No.1 and 2.

Vinod K.Sharma, J.

This regular second appeal has been filed against the judgments and decrees passed by the learned courts below dismissing the suit filed by the plaintiff-appellant for mandatory injunction against the State of Haryana and others.

The plaintiff-appellant filed a suit on the ground that he is owner of House No.3787-3788 near Police Station Sadar Bazar, Ambala Cantt. which was purchased vide registered sale deed dated 18.2.2000. In

the north side of the said property i.e. in between the property of the plaintiff and building of Police Station Sadar Bazar, Ambala Cantt. there is a public street measuring 8-1/2 feet. Defendant No.2 i.e. S.H.O. Police Station, Sadar Bazar, Ambala Cantt. has encroached upon the said public street by constructing latrine and by putting up a gate at the entrance of the said street. Public streets were said to have been blocked without any right or authority. It was claimed that windows and Parnalas of the house of the plaintiff are also opening in the said public street. The plaintiff is to reconstruct the house but because of the said encroachment he is not in a position to reconstruct. It was also claimed that the construction of the latrines in the public street is a nuisance to the public in general and the plaintiff who is owner of the adjoining building. The plaintiff claimed to be suffering huge loss and mental torture and he claimed a sum of Rs.20,000/- as compensation from defendants No.1 and 2 on the plea that defendant No.2 was under defendant No.1. It was claimed that the Municipal Council i.e. defendant No.3 also wrote a letter dated 25.7.2000 bearing No.BE/3795 to the Senior Superintendent of Police, Ambala on the complaint of the plaintiff dated 20.7.2000 after inspection of the spot calling upon defendant No.2 to remove the said encroachment and unauthorised occupation but to no effect. Plaintiff claimed that he made several complaints to the different authorities but no action was taken. On 17.8.2000, D.S.P., Ambala made a spot inspection on the complaint of the plaintiff but no action was taken to remove the encroachment. A notice under section 80 of the Code of Civil Procedure and under Section 52 of the Haryana Municipal Act, 1973

was served upon the defendants but with no result. It was claimed that defendant No.3 i.e. the Municipal Council, Sadar Ambala was also liable to pay a sum of Rs.20,000/- as compensation because it failed to take necessary action to demolish the encroachment. Compensation at the rate of Rs.1,000/- per month was also claimed from defendants No.1 and 2 from the date of filing of the suit till actual removal of the said encroachment. Joint liability for payment of compensation was also claimed against defendant No.3.

Upon notice suit was contested by defendants No.1 and 2 by filing a joint written statement in which a preliminary objection was taken that the present suit was filed just to grab the Government land. It was claimed that the plaintiff has got no locus standi to file the present suit. The maintainability of the suit was also challenged. The street was claimed to be the exclusive property of defendants No.1 and 2 which was said to have been kept vacant since 1939 when the Police Station was constructed. It was claimed that prior to the alleged purchase by the plaintiff no objection had been raised qua the use of the land. It was claimed that defendants being in physical and actual possession of the land for the last about 64 years they have become the owners of the same by adverse possession.

On merit it was claimed that there was no public street. It was said to be open space on all four sides of the Police Station which is part and parcel of the portion of the land belonging to the Police Station, Sadar Bazar Ambala Cantt. and owned by defendants No.1 and 2. It was claimed that the plaintiff wants to usurp this land. It was claimed that no other

person has raised any claim to the said property. Shops of Municipal Committee and Schools were said to be touching the open space. It was claimed that owner of the house at the back of the plaintiff's side left space and constructed pucca Nali on his portion of the land and he has not touched the open space attached with the Police Station on the southern side. The alleged street was said to be closed on both sides. The said land was in use since the time immemorial and the same was kept vacant. It was claimed that path and latrines were constructed there. The land was said to be kept for security, expansion use and other allied matters. It was claimed that windows and Parnalas have been opened by the plaintiff in unauthorised manner and the defendants have right to get the same closed. The land was claimed to be within the area of Police Station, Ambala Cantt. which is of 1.06 acres which was clear from the site plan. It was claimed that defendants were in possession of the disputed land since 1939 and Municipal Committee, Ambala Sadar came into existence in the year 1972-73. Therefore, it was not possible for the Committee to tell that it is a public street. Thus, it was claimed that suit being without merit be dismissed.

Defendant No.3, Municipal Committee contested the suit by filing separate written statement wherein a preliminary objection was taken that the suit was not maintainable. The locus standi of the plaintiff to file the suit was also challenged. It was claimed that no legal notice has been served. Allegations of concealment of material facts were also levelled. On merit it was submitted that the land towards the north side of the property bearing No.3787-3788 is not a public street. It was claimed that as per the

survey plan open space has been left around the Police Station, Sadar, Ambala which was in possession of the Police Station from the very beginning and left for security purposes. It was claimed that construction of latrines was very old. It was also claimed that the same was in possession of the Police Station from the very beginning. Said latrines were said to be in existence prior to the alleged purchase by the plaintiff. It was claimed that the plaintiff has no right on this land which was left for security purposes. Defendant No.3 also claimed that the suit deserves dismissal.

Replication was filed controverting the averments made in the written statement and reasserting that of the plaint. On the pleadings of the parties, following issues were framed:-

1. Whether plaintiff is entitled to injunction as prayed for? OPP
2. If issue No.1 is proved, whether plaintiff is entitled to recovery of Rs.20,000/- as compensation besides recovery of Rs.1000/- per month as future mesne profits? OPP
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether suit is bad for want of notice under Section 80 of CPC? OPD
5. Whether suit is not maintainable? OPD
6. Relief.

On issue No.1 learned trial court came to the conclusion that

the documents relied upon by the plaintiff to prove that the disputed place was a public street were not enough to support the case of the plaintiff-appellant as he had sought to prove his case on the self serving statement. It was also observed that the plaintiff failed to produce any other resident of the locality who could depose before the court that the disputed space was public street. It was also observed that if the blocking of the street was true then certainly other residents of the locality could appear to support the plaintiff and therefore, came to the conclusion that the plaintiff was not entitled to injunction claimed by him. Thus, issue No.1 was decided against the plaintiff. On issue No.2 also learned trial court came to the conclusion that as the plaintiff-appellant failed to prove his case, this issue also deserved to be decided against the plaintiff. Issues No.3 and 4 were decided against the defendant as it was proved on record that notice was issued by the plaintiff before filing the suit, whereas issue No.3 was not pressed. Issue No.5 was also decided against the defendant and consequently, in view of findings recorded on issues No.1 and 2, suit was dismissed.

In appeal, an application under Order 41 Rule 27 of the Code was made for leading additional evidence. However, this application was dismissed by observing that the evidence sought to be produced could have been produced by the plaintiff-appellant in the trial court. Learned Additional District Judge, Ambala affirmed the findings of the learned trial court and thus, dismissed the suit.

Mr.O.P.Goyal, learned senior counsel appearing on behalf of the appellant submitted that following substantial questions of law arise for

consideration in this appeal:-

1. Whether in the facts and circumstances of the case the courts below were right in dismissing the suit of the plaintiff and judgments and decrees under appeal are based upon misreading and mis-appreciation of evidence and thus not sustainable?
2. Whether the findings recorded by the learned courts below are perverse and not sustainable in the eye of law?

Mr. O.P.Goyal, learned senior counsel appearing on behalf of the appellant in support of the above substantial questions of law drew attention of this court to the pleadings of the parties i.e. the plaintiff and defendant No.3 i.e. Municipal Council, Sadar Ambala. The contention of the learned senior counsel was that in para No.9 of the plaint a specific averment was made that defendant No.3 had written a letter dated 25.7.2000 bearing No.BE/3795 to the Senior Superintendent of Police, Ambala on the complaint of the plaintiff dated 20.7.2000 and after inspection of the spot with a prayer to remove the said encroachment and unauthorised occupation but to no effect. The averments made in para No.9 were admitted by defendant No.3 and it was asserted that the averments made in para No.9 of the plaint are correct that a letter No.BE/3795 was written to the Senior Superintendent of Police, Ambala for removal of toilets and boundary wall being encroachment on the street.

Learned senior counsel for the appellant thereafter made reference to the sale deed executed in favour of the plaintiff wherein the

property in dispute was also shown to be street. The contention of the learned senior counsel was that on account of existence of the street he was allowed to open Parnalas and windows towards the said land. As already observed above letter dated 25.7.2000 written by defendant No.3 to the Senior Superintendent of Police,Ambala was also placed on record as Ex.P.8 which clearly showed that respondent No.2 was directed to remove encroachment from the above street. Learned senior counsel also referred to the notice Ex.P.9 wherein allegations of encroachment were mentioned but no reply to the said notice was sent in spite of due service. Learned senior counsel also brought to the notice of this court that by way of Ex.P.4, extract of General Land Register was produced on record and the total area of Police Station was shown to be 8125 square feet. The contention of the learned senior counsel was that if the total area as claimed by the defendants is taken into consideration that comes to 13923 square feet and therefore, the contention raised was that the stand taken by the respondents that the alleged street was an open area left for security purposes could not be eccepted. As against the documentary and oral evidence led by the plaintiff, the State only examined S.H.O., Police Station, Ambala Cantt. who reiterated the stand taken by him in the written statement and claimed that vacant land on four sides measuring 1.06 acres (including Govt. quarters) belongs to the State and the open land was meant for expansion purposes. However, in cross-examination he showed his ignorance about the length and breadth of the Police Station nor he was able to give time and date when the latrines were constructed. He admitted that the said latrines

were not in use at present. Statement of D.W.2, Jai Singh, S.H.O. was also somewhat to similar effect.

In view of the contentions raised above learned senior counsel appearing on behalf of the appellant contended that the judgments and decrees passed by the learned courts below, therefore, is the outcome of misreading of documentary and oral evidence brought on record and are to be treated to be perverse.

On the other hand, Mr. Amit Kaushik, learned Assistant Advocate General, Haryana appearing on behalf of respondents No.1 and 2 supported the judgments and decrees on the plea that concurrent finding of fact has been recorded holding therein that site in dispute is not a public street and the same does not call for any interference in the regular second appeal.

Learned Assistant Advocate General, Haryana also contended that the latrines were constructed number of years back and therefore, the plaintiff has no right to get the same removed and therefore, the learned courts below were justified in dismissing the suit filed by the plaintiff-appellant.

After hearing the learned counsel for the parties, I find that there is force in the contentions raised by the learned senior counsel appearing on behalf of the appellant. The documentary evidence produced on record especially the admission made by the Municipal Council in the written statement claiming the disputed site to be a street the courts below were not justified in dismissing the suit by drawing an adverse inference

against the plaintiff for not producing the residents of the area in support of his case. The public street has been defined under the Haryana Municipal Act, 1973 to read as under:-

> "(21) "public street" shall mean any street-
>
> (i)heretofore levelled, paved, metalled, channelled, sewered or repaired out of municipal or other public funds, unless before such work was carried out, there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor, or
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> (ii)which, under the provisions of Section 180, is declared by the committee to be, or under any other provision of this Act becomes,a public street."

In view of the specific admission made in para no.9 by the Municipal Committee the courts below were bound to draw a presumption that the site in dispute is a public street. Otherwise also, the very fact that windows and parnalas open towards the said area show that it was a street which has been wrongly encroached upon. Learned courts below were also not justified in dismissing the suit merely on the plea that latrines were in existence for long time. No plea of adverse possession was taken. Rather the stand of the respondents was that the area belongs to the Police Station which has been left open for expansion purposes. This stand was also belied by the documentary evidence placed on record showing the area of the Police Station to be 8125 square feet. Learned courts below failed to

notice the settled law that men may lie but documents do not. All the documents placed on record showed the area to be a lane and therefore, was a public street as defined under the Haryana Municipal Act and no authority or a person has any right to encroach upon the same.

In view of the findings recorded above both the substantial questions of law as framed are answered in favour of the plaintiff-appellant.

Consequently this appeal is partly allowed. The judgment and decrees passed by the learned courts below are set aside and the suit filed by the plaintiff for mandatory injunction is partly decreed and mandatory injunction is issued directing the defendants to remove the encroachment of latrines etc. from the street towards north of House No.3787-3788 near Police Station Sadar Bazar, Ambala Cantt. and for restoring the street in its original position as public street. However, the claim of compensation is rejected as no evidence in support of damages has been led by the plaintiff-appellant. There shall be no order as to costs.

25.9.2007 **(Vinod K.Sharma)**
rp **Judge**